



Office of the City Manager

PUBLIC HEARING  
January 16, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Expansion of the Elmwood Business Improvement District, Levy Assessments in the District for 2025, and Authorize a Contract with the Elmwood Business Association (EBA) to receive assessment revenue

RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance expanding the Elmwood Business Improvement District, amending Chapter 7.84 of the Berkeley Municipal Code (BMC) originally adopted by Ordinance No. 6,164-N.S.; and
2. Adopt a Resolution levying assessments in the Elmwood Business Improvement District for calendar year 2025 and giving the City Manager authority to contract with the Elmwood Business Association (EBA) to receive assessment revenue and spend it on improvements and activities authorized in the Ordinance and the Resolution of Intention: Resolution No. 71,099 -N.S.

FISCAL IMPACTS OF RECOMMENDATION

Based on the expanded geographic District boundary, projected Business Improvement District (BID) revenue of approximately \$50,000 will be deposited into the Elmwood BID Fund, and expensed from budget code 782-21-208-251-0000-000-446-636110. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Advisory Board. The City of Berkeley operates a parking lot within the district and will thus be assessed \$2,000 annually, paid through the Off-Street Parking Fund.

CURRENT SITUATION AND ITS EFFECTS

On August 18, 2023, the Elmwood Business Association voted unanimously to support the expansion of the district boundary. On October 2, 2023, the Elmwood Business Improvement District Advisory Board voted on an expanded district boundary to be implemented in calendar year 2025 (M/S-Han/Hammond; Ayes: (3) Han, Berne, Hammond, Nays: 0, Absent: (1) Stepak. The Elmwood Business Improvement District Advisory Board also voted to increase the assessment rate by \$1,000 for Parking Lot Operators to \$2,000, and decrease the \$250 assessment rate for Hair, Nail and Skin Services (NAICS 81211) to \$200 annually which is reflected in Exhibits A1 and A2 of

Attachment 2 (M/S-Han/Berne; Ayes: (3) Han, Berne, Hammond, Nays: 0, Absent: (1) Stepak.

California Streets and Highway Code Section 36500, the Parking and Business Improvement Area Law of 1989, requires specific actions to create or expand a business-based improvement district including compliance with Section 54954.6 of the California Government Code. Section 54954.6 requires Council to conduct at least one public meeting at which local officials allow public testimony regarding the proposed new assessment in addition to the noticed public hearing at which the legislative body proposes to enact the assessment.

On November 21, 2023 Council adopted Resolution No. 71,099–N.S., which states the intention to expand the Elmwood BID and directed the City Clerk to schedule a public meeting on December 12, 2023, and a public hearing on January 16, 2024 to consider the expansion of the District. The City Clerk’s Office gave joint notice of both by mailing Resolution No. 71,099-N.S. to all affected businesses in the proposed (expanded) District, as is allowed by Section 54954.6 of the Government Code.

The proposed (expanded) Elmwood BID would assess businesses an annual fee according to classifications and rates defined in Exhibit A2 to Resolution No. 71,105-N.S., attached. The assessment will be collected at the same time as the annual business license renewal in a special fund, and will be remitted the revenue to the Elmwood Business Association (EBA) which will continue to be the “operating corporation” of the Elmwood BID. Projected revenues of approximately \$50,000 per year will be spent by the EBA on a program of services and activities intended to market, maintain and beautify the expanded Elmwood business improvement district.

### BACKGROUND

In 2019, the members of the both the EBA and the BID Advisory Board expressed interest in potentially expanding the boundaries of the Elmwood BID to increase capacity and collaboration with unrepresented businesses on the northern and southern ends of the Berkeley’s commercial areas along College Avenue. During the course of outreach with impacted merchants; collaboration with the neighboring Rockridge District Association in Oakland was explored and rich opportunities for streetscape improvements and partnerships were uncovered. The goal of expanding the District boundary is to support activities and programming and increase merchant and business owner collaboration in areas along College Avenue that have not previously benefited from BID support. The resolution of intention was adopted on November 21, 2023, the public meeting held on December 12, 2023, and this public hearing (1/16/24) represents the last legislative step in the process for the BID’s boundary expansion in 2025.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

By maintaining and enhancing the district, the Elmwood BID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of

transportation. The environmental enhancements contribute to making the Elmwood a more pleasant walking destination. Because the district is served by public transportation and biking infrastructure, these services indirectly support environmental sustainability goals of encouraging alternative transportation choices.

RATIONALE FOR RECOMMENDATION

This public hearing is required by California Streets and Highway Code Section 36623 and Section 54954.6 of the California Government Code.

ALTERNATIVE ACTIONS CONSIDERED

The merchants considered various alternative boundaries and assessment formulas and rates, but settled on those proposed herein.

CONTACT PERSON

Kieron Slaughter, Office of Economic Development, 510-981-2490

Attachments:

- 1: Ordinance
- 2: Resolution, Levy Assessments in the Elmwood Business Improvement District for 2025; Authorize a Contract with the Elmwood Business Association (EBA) to receive assessment revenue
- 3: Resolution No. 71,099-N.S., *Intent to Expand Elmwood BID Boundaries for 2025*, November 21, 2023. (Includes Notice of Public Hearing)

ORDINANCE NO. -N.S.

ELMWOOD BUSINESS IMPROVEMENT DISTRICT AMENDMENTS; AMENDING  
BERKELEY MUNICIPAL CODE CHAPTER 7.84

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 7.84.030 is amended to read as follows:

**7.84.030 Boundaries of district.**

The boundaries of the District are as specified in this section and in the District's Boundary Map attached to the ordinance codified in this chapter and on file with the office of the City Clerk.

Western Boundary. A line connecting the western edge of all parcels fronting on the western side of College Avenue in the C-E and R-2A zoning districts from 2832-2640 College to 2992-3212 College but including parcels facing Derby Street, Stuart Street, Russell Street and the City-owned Elmwood parking lot that is accessed from Russell Street, and 2933 Benvenue Ave, addresses on 2626 Ashby Ave and 2953 Benvenue Ave ~~from 2629 to 2648~~. The parcels along the western boundary are as follows:

Assessor's Book 053:

Block 1695: Parcels 4, 6, 7, 11, 9-1, 9-2, 10, 12-1, and 12-2, 13, 14, 30, 31, and 36.

Assessor's Book 052:

Block 1409: Parcels 1-1, and 3.

Block 1410: Parcels 2, 12, 14-2, 16-1, 18, 20-1, 22-1, 24, 26, 28, 30, 32, 34, 36, and 41.

Block 1562: Parcels 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 39, 47, and 50.

Block 1568: Parcels 2, 3, 4-1, 5-1, 5-2, 6-2, 7, 9, 11-1, 12-1, 14, 49, 50, 51, 52, 53, 55, and 56.

Block 1573: Parcels 2, 4-1, 6, 12, 13, 14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, and 103.

Eastern Boundary. A line connecting the eastern edge of all parcels fronting on the eastern side of College Avenue from ~~2887 College Avenue~~ 2704 Derby Street to ~~2999~~

College Avenue and 2701 Webster Street, 2704 Alcatraz Avenue and 3217 College Avenue and parcels fronting Stuart Street, Webster Street, Prince Street, Woolsey Street and Alcatraz Avenue. The parcels along the eastern boundary are as follows:

Assessor's Book 055:

Block 1845: Parcels 15-1, 15-2, 16, 17

Assessor's Book 054:

Block 1707: Parcel 10-1

Block 1708: Parcels 14, 15, 16, and 17.

Block 1709: Parcels 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 29, and 38.

Assessor's Book 053:

Block 1696: Parcels 1, 2, 15, 16, 17, 18, 19, and 20

Block 1699: Parcels 15, 16, 17, 18, and 19

Assessor's Book 052:

Block 1563: Parcels 28, 29, 30, 31, 32, 33, 34, 35, 36, 63, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 96, 97, 176-2, 177-1, 188, 191, 203, and 221,

Block 1564: Parcels 31, 32, 33, 34, 35, 36, and 37.

Block 1567: Parcels: 16, 17, 18, 19, 20, 21, 22, 23, 24, 62, 63, 64, 66, 67, 68, 87, 88, 89, 90, and 91.

Block 1568: Parcels 14, and 16-2.

Block 1573: Parcel 13.

Southern Boundary. Webster Street. A line connecting the southern edge of parcel 052-1563-188 (3217 College) on the eastern side of College and the southern edge of parcel 052-1409-3 (3212 College) on the western edge of College.

Northern Boundary. A line connecting the northern edge of parcel 053-1695-011055-1845-15-2 (2832 2640 College) on the western side of College and the northern edge of parcel 053-1696-015-054-1708-17 (2887 College 2704 Derby) on the eastern side of College.

Section 2. That Berkeley Municipal Code Section 7.84.040 is amended to read as follows:

**7.84.040 Calculation of assessments.**

Businesses, trades, and professions located within the District boundaries shall, commencing on January 1, ~~2014~~2025, pay an annual benefit assessment to the District in the amounts shown in Table 7.84.040.

**Table 7.84.040.**

<b>Business Classifications and Assessment Rates</b>	
<b>Classifications</b>	<b>Annual Rates</b>
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places)	
• Gross receipts under \$350,000	\$250
• Gross receipts \$350,000--\$999,000	\$350
• Gross receipts \$1,000,000	\$500
Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)	\$500
Professionals including offices of real estate brokers (Tax Code P)	
• Gross receipts under \$100,000	\$300
• Gross receipts over \$100,000	\$400
Entertainment and Recreation (Tax Code E)	\$450
Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Care Services (NAICS 81211)	\$200
Hair, Nail and Skin Care Services (NAICS 81211)	<del>\$2</del> 500
Parking lot operators	<del>\$1</del> 2,000
Financial Institutions	\$2,500

~~No person or business shall be required to pay an assessment based on a residential use of the property within the District.~~ Any business that is classified as a nonprofit (Tax Code N) for business licenses purposes, shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification if it is engaged in the sale of products or services. Any new business established within the District shall not be required to pay an assessment on application for its business license but only on renewal at the end of the year it was initiated.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. ##,###-N.S.

LEVYING AN ANNUAL ASSESSMENT IN THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT (BID) FOR CALENDAR YEAR 2025, AND AUTHORIZING A CONTRACT OR CONTRACT AMENDMENTS WITH ELMWOOD BUSINESS ASSOCIATION TO SERVE AS FISCAL AGENT FOR RECEIPT AND EXPENDITURE OF ELMWOOD BID FUNDS

WHEREAS, on November 21, 2023, the City Council by Resolution No. 71,099-N.S described an expanded boundary for the Elmwood BID, and a revised fee structure, and declared its intent to levy an assessment in the District to finance the proposed activities for the calendar year 2025; and

WHEREAS, Resolution No. 71,099 -N.S. also scheduled a public hearing for January 16, 2024, to consider levying said assessment and gave notice that interested parties could attend and be heard on the issue, for and against; and

WHEREAS, the City Clerk has notified potential assessees of the public hearing by publishing the Resolution of Intention in a newspaper of general circulation; and

WHEREAS, the public hearing has now been held and there has not been protests by business owners who collectively pay 50 percent or more of the assessment proposed to be levied.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that any protests are overruled and the expanded boundaries of the Elmwood BID is confirmed, thereby levying an annual assessment for the Elmwood BID for calendar year 2025.

BE IT FURTHER RESOLVED that the Council authorizes the City Manager to enter into a contract or contract amendments with Elmwood Business Association to receive and spend funds for purposes approved in the Annual Report and Budget and as directed by the Elmwood BID Advisory Board.

RESOLUTION NO. 71,099-N.S.

DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2025; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR JANUARY 16, 2024 REGARDING AN EXPANDED DISTRICT BOUNDARY AND ASSESSMENT RATES FOR 2025

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on November 19, 2013 the Berkeley City Council established such an area known as the Elmwood Business Improvement District (the "District"); and

WHEREAS, the City Council established the Elmwood Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, on October 2, 2023 the Advisory Board voted to approve an expanded boundary map of the District, to update the assessment rates, and to submit the proposed rates and map to the City Council as required by the California Streets and Highways Code Section 36500; and

WHEREAS, the proposed district map is clear and complete and found to comply with the interests of Elmwood BID assessees; and

WHEREAS, the process for modifying the boundaries and assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to modify the boundary and the assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to modify the district boundary map and levy an annual assessment for the parking and business improvement area known as the Elmwood Business Improvement District.

Section 2. The boundaries of the District are set forth in Exhibit A1 to the Resolution of Intent which is attached hereto and incorporated herein by reference.

Section 3. The improvements and activities proposed for the District will utilize funds designated for activities and improvements in the Elmwood area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City. The improvements and activities proposed for the District

are to promote, maintain and beautify the Elmwood Commercial District and include maintenance and capital improvements targeted for the area. Funds must be used for designated activities and improvements in the Elmwood BID commercial area. Funds generated through this BID shall not be used for activities routinely paid for by the City.

Any interested individual may contact Kieron Slaughter, Secretary to the Elmwood BID Advisory Board at (510) 981-2490 or at 2180 Milvia St., 5th Floor, Berkeley, CA 94704.

Section 4. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference. Any past due business license tax and related assessment fees will correspond to the rate currently in place. Any past due business license tax and related assessment fees not in the assessment boundary prior to January 1, 2025 will not be subject to the assessment.

Section 5. A public hearing shall be held before the City Council at 6:00 p.m. on January 16, 2024 at 1231 Addison Street, Berkeley, California. Following the hearing the Council will consider adoption of a resolution approving the District boundary map and levying an assessment as recommended by the Elmwood Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the expanded District boundary map or the levying of such an assessment. A public meeting will be held December 12, 2023 at 6:00 p.m. at 1231 Addison Street, Berkeley, California regarding the proposed expansion as required by Government Code Section 54954.6.

Protests may be made orally at the public hearing, or in writing by any interested person. Written protests shall be filed with or mailed to the City Clerk Department, 2180 Milvia Street, First Floor, Berkeley, California, 94704. Written protests must be received by the City Clerk at or before 3:00 pm on January 16, 2024. Written protests may also be filed in person at the public hearing, prior to the close of the hearing. Written protests will not be considered valid unless signed by the owner of a business located within the boundaries of the proposed District. This signature shall be accompanied by the name of the business owner (printed) and the date of the protest. Additionally, written protests shall contain a description of the business sufficient to identify the business, such as business name (printed), business address (printed), and City Business License Tax Registration number (or, if no Business License Number, Financial Institution name). Protests must also state if they are protesting against the furnishing of a specified type or types of improvements or activities within the District.

If the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business.

Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written

protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation.

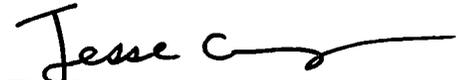
Section 8. The City Clerk is directed to give notice of said hearings as provided in section 36623 of the Act and section 54954.6 of the Government Code, which requires that the agency shall give notice by mail to the record owner of each identified business and financial institution. The public hearing shall be held not less than 45 days after the adoption of this Resolution.

The foregoing Resolution was adopted by the Berkeley City Council on November 21, 2023 by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Robinson, and Arreguin.

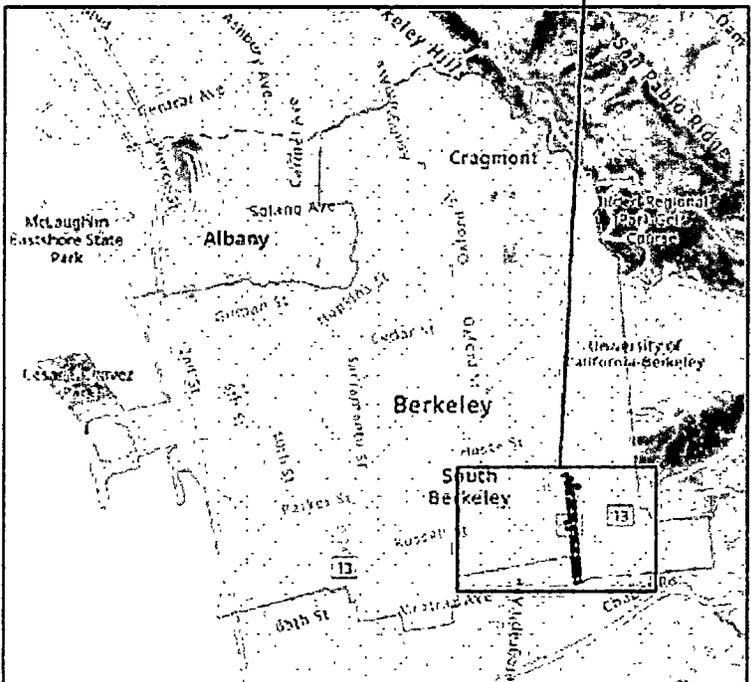
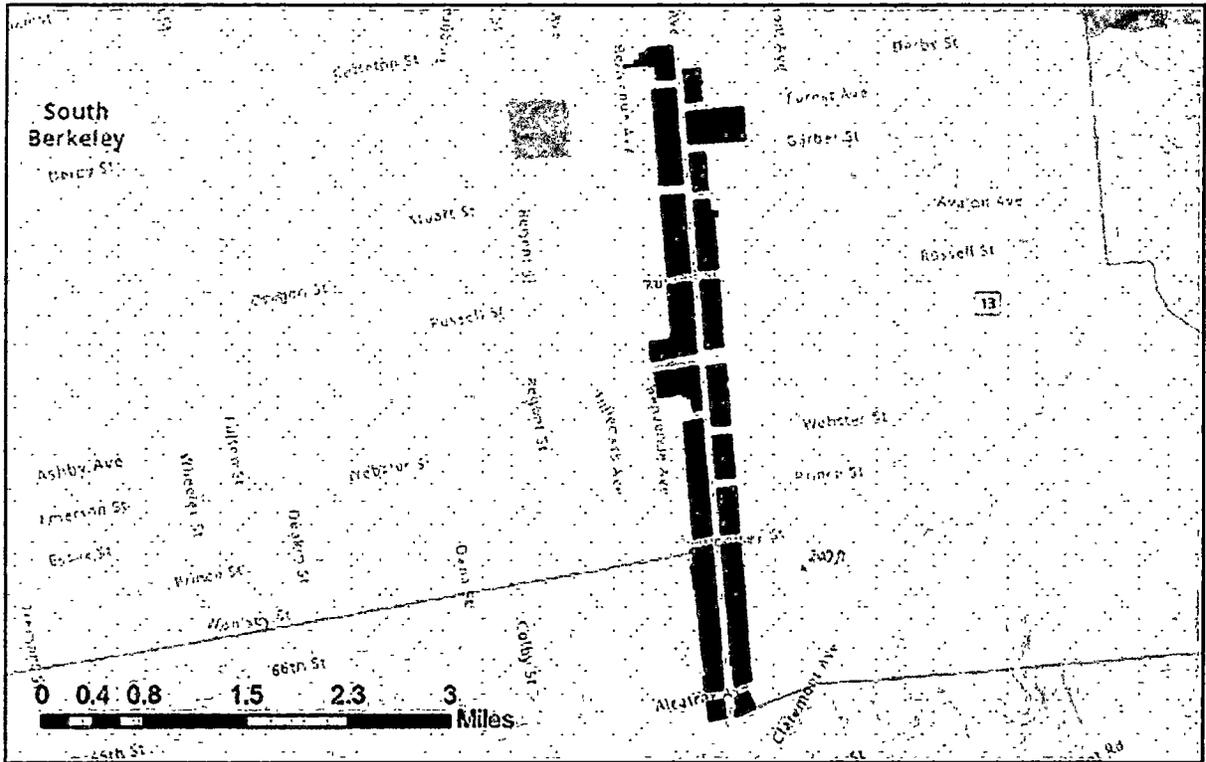
Noes: None.

Absent: Kesarwani, Taplin and Wengraf.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

Exhibit A1: Proposed Elmwood Business Improvement District Boundary Map - 2025



- BID Elmwood Recommendation
- City of Berkeley



## Exhibit A2: Elmwood Business Improvement District, Assessment Rates – 2025

Classifications	Rates
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) <ul style="list-style-type: none"> <li>Gross receipts under \$350,000</li> <li>Gross receipts \$350,000-\$999,999</li> <li>Gross receipts \$1,000,000+</li> </ul>	\$250.00 per year \$350.00 per year \$500.00 per year
Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)	\$500.00 per year
Professionals including offices of real estate brokers (Tax Code P) <ul style="list-style-type: none"> <li>Gross receipts under \$100,000</li> <li>Gross receipts over \$100,000</li> </ul>	\$300.00 per year \$400.00 per year
Entertainment and Recreation (Tax Code E)	\$450.00 per year
Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Cares Services (NAICS 81211)	\$200.00 per year
Hair, Nail and Skin Care Services (NAICS 81211)	\$200.00 per year
Parking lot operators	\$2,000.00 per year
Financial Institutions	\$2,500.00 per year

Any business that is classified as a nonprofit (Tax Code N) for business licenses purposes, shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification if it is engaged in the sale of products or services. Any new business established within the District shall not be required to pay an assessment on application for its business license but only on renewal at the end of the year it was initiated. (Ord. 7317-NS § 3 (part), 2013)

